

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff,

vs.

TOWN OF NORTH BROOKFIELD,

Defendant.

Civil Action No. 03-40266 CBS

JOINT MOTION TO EXTEND SCHEDULING ORDER

Plaintiff, American Manufacturers Mutual Insurance Company (“AMMIC”), and Defendant, Town of North Brookfield (the “Town”) (collectively, the “Parties”), by way of undersigned counsel, hereby move this Court to extend the remaining tracking deadlines as amended on July 11, 2005. The parties request that the Court enter an Order extending all remaining discovery dates by approximately forty-five (45) days in order to facilitate a fair and reasonable period for each party’s expert to submit a rebuttal report. As grounds for its this Motion, the Parties state as follows:

1. Both parties designated trial experts by the August 5, 2005 deadline. The Town named Lee P. Dore and Christopher M. Conway. AMMIC named Richard P. Anastasio and Michael Daley.

2. Except for the expert report of Mr. Anastasio, all expert reports were timely submitted. Mr. Anastasio experienced multiple technical errors on his computing network late in the evening on August 5, 2005. This prevented his timely submission. His report was submitted on Wednesday, August 10, 2005 – approximately four and one-half days late. For this reason,

the Town should be allowed at least that much additional time to analyze the same and produce a rebuttal report.

3. Like the Town, AMMIC is also entitled to an extension. After reviewing Mr. Dore's report, AMMIC requested additional documents relied upon by Mr. Dore comparing certain aspects of the North Brookfield project to a recent construction project at the Ralph C. Mahar Regional School in Orange, MA (the "Mahar School"). On Monday, August 8, 2005, AMMIC requested that the Town supplement its document production with the Mahar School documents within 24 hours so that Mr. Anastasio would have enough time to analyze these documents and include them in his rebuttal report. The Town was not in a position to fulfill AMMIC's request in such a timeframe. AMMIC is entitled to additional time to obtain copies of the Mahar School project documents and to allow Mr. Anastasio the opportunity to review and analyze the same.

4. Upon receiving and reviewing each others' expert reports, the Parties collectively agree that the complexity of facts and law arising from this construction project warrant additional time for their experts to adequately digest, analyze, and rebut the others' opinions. Additional time will produce more comprehensive and complete expert rebuttals. This will help narrow issues for trial.

WHEREFORE, the Parties respectfully request that this Court enter an Order extending all remaining deadlines for approximately forty-five (45) days in accordance with the following:

- Expert depositions to be completed by 10/28/05. Supplemental reports by 10/7/05.
- All dispositive motions, including motions for summary judgment, are to be filed by 11/18/05 and responses are to be filed thirty (30) days thereafter pursuant to Local Rule 7.1.

- A final pretrial conference will be set by Magistrate Charles B. Swartwood, and must be attended by trial counsel. Counsel shall be prepared to commence trial as of the date of the final pretrial conference.

Respectfully submitted,

Town of North Brookfield

American Manufacturers Mutual Insurance
Company

By its attorneys,

By its attorneys,

/s/ Thomas W. McEnaney

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Dated: August 16, 2005.

CERTIFICATE OF SERVICE

I, Jeff D. Bernarducci, counsel to the Plaintiff, American Manufacturers Mutual Insurance Company, in the above-captioned matter, do hereby certify that on August 16, 2005, I served a copy of the Joint Motion to Extend Scheduling Order by way of electronically filing the same through ECF, to:

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